

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

DAVID G. QUIMBY,

Civ. No. 06-1698-HO

Plaintiff,

ORDER

v.

Commissioner of Social Security,

Defendant.

Plaintiff filed this action for review of the decision of the Commissioner denying his application for a period of disability and disability insurance benefits. For the reasons explained below, the decision of the Commissioner is reversed. This matter is remanded to the Commissioner for further proceedings.

Discussion

Plaintiff contends the administrative law judge (ALJ) (1) failed to seek clarification of plaintiff's physical impairments from plaintiff's treating physician or a consultative examiner,

(2) improperly disregarded plaintiff's statements and (3) failed to elicit an explanation from plaintiff for his failure to pursue medical treatment.

The Commissioner requested medical source statements from treating physicians. (Tr. 197, 231). The lack of a medical source statement does not render plaintiff's report incomplete. 20 C.F.R. § 404.1513(b)(6).

The ALJ found plaintiff's testimony of disabling pain and inability to walk incredible, because the testimony is inconsistent with objective medical evidence, the medical record contradicts plaintiff's testimony that his doctor refused to prescribe medication, plaintiff failed to seek treatment and follow through with medical appointments, and plaintiff works part-time as a ranch hand. With the following exception, the reasons cited by the ALJ are clear and convincing and supported by substantial evidence.

The ALJ discredited plaintiff's allegations of disabling pain and inability to walk in part because plaintiff failed to seek treatment for significant stretches of time and failed to attend follow-up visits with his surgeon. (Tr. 18).

[T]he adjudicator must not draw any inferences about an individual's symptoms and their functional effects from a failure to seek or pursue regular medical treatment without first considering any explanations that the individual may provide, or other information in the case record, that may explain infrequent or irregular medical visits or failure to seek medical treatment. The adjudicator may need to . . . question the

individual at the administrative proceeding in order to determine whether there are good reasons the individual does not seek medical treatment or does not pursue treatment in a consistent manner.

SSR 96-7p. Neither the ALJ nor plaintiff's attorney elicited such testimony from plaintiff.

This matter must be remanded to the ALJ to elicit an explanation from plaintiff as to why he did not seek treatment or failed to pursue treatment in a consistent manner, and to issue a new decision.

Conclusion

Based on the foregoing, the decision of the Commissioner is reversed. This matter is remanded to the Commissioner for further proceedings.

IT IS SO ORDERED.

DATED this 31st day of October, 2007.

s/ Michael R. Hogan
United States District Judge